

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

THE STATE OF TEXAS, et al.,	§	
	§	
Plaintiffs,	§	
v.	§	Civil Action No. 4:20-cv-00957-SDJ
	§	
GOOGLE LLC,	§	
	§	
Defendant.	§	

**GOOGLE’S UNOPPOSED MOTION TO ALLOW THE DEPOSITION OF  
GOOGLE’S EXPERT AFTER CLOSE OF EXPERT DISCOVERY**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE

Expert discovery is scheduled to close on November 1, 2024. ECF No. 609 at 1. The parties had agreed that one of Google’s experts would be deposed on October 31, 2024, but that expert became ill and is no longer available to sit for a deposition until after the close of expert discovery. In light of this illness, Google respectfully requests that the Court allow this expert’s deposition to be taken after the close of expert discovery and treated as though it was taken prior to the close of expert discovery. Google has conferred with Plaintiffs and they do not oppose this motion. The parties will cooperate to schedule this deposition. Google does not otherwise seek to modify the expert discovery deadline.

Generally, when a party seeks to modify the scheduling order, the Court must consider whether the party has shown “good cause.” *Squyres v. Heico Companies, L.L.C.*, 782 F.3d 224, 237 (5th Cir. 2015). Good cause is determined based on four factors: “(1) the explanation for the failure to timely [comply with the scheduling order]; (2) the importance of the [modification]; (3) potential prejudice in allowing the [modification]; and (4) the availability of a continuance to cure

such prejudice.” *Springboards To Educ., Inc. v. Houston Indep. Sch. Dist.*, 912 F.3d 805, 819 (5th Cir. 2019), *as revised* (Jan. 29, 2019), *as revised* (Feb. 14, 2019) (quoting Fed. R. Civ. P. 16(b)(4)).

Google submits that there is good cause to allow the expert’s deposition to be taken after November 1, 2024. First, while the parties were prepared to proceed with the deposition before the close of expert discovery, the expert’s unanticipated illness necessitated postponement. Second, under the circumstances, it is not possible to complete this deposition prior to the expert discovery cut-off, such that the modification is important to ensure the deposition can proceed. Third, holding the deposition after November 1 will not prejudice any party. Fourth, this deposition will be completed promptly and the parties have agreed, assuming the Court’s permission, that they will seek the same briefing schedule as to this expert witness as is sought in the Joint Stipulation (Dkt. 649), to wit:

1. The States may file a *Daubert* motion, if any, to the expert at issue by January 10, 2025.
2. Google may file a response to this *Daubert* motion by January 24, 2025.
3. The States may file a reply to this *Daubert* motion by February 7, 2025.

Accordingly, good cause exists to allow the deposition to be taken after November 1 and the above *Daubert* motion dates (only as to the expert at issue) be moved as set out above.

Dated: October 31, 2024

Respectfully submitted,

**FRESHFIELDS US LLP**

/s/ Robert J. McCallum  
Robert J. McCallum (*pro hac vice*)  
3 World Trade Center  
175 Greenwich Street  
New York, NY 10007  
Tel.: (212) 284-4910  
Fax: (212) 277-4001  
rob.mccallum@freshfields.com

Eric Mahr (*pro hac vice*)  
700 13th Street, NW  
10th Floor  
Washington, DC 20005  
Tel.: (202) 777-4545  
Fax: (202) 777-4555  
eric.mahr@freshfields.com

**GIBBS & BRUNS LLP**

Kathy D. Patrick  
State Bar No. 15581400  
Kpatrick@gibbsbruns.com  
Ayesha Najam  
Texas Bar No. 24046507  
Anajam@gibbsbruns.com  
Michael R. Davis  
Texas Bar No. 24109793  
Mdavis@gibbsbruns.com  
1100 Louisiana, Suite 5300  
Houston, Texas 77002  
Tel.: (713) 650-8805  
Fax: (713) 750-0903

*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I certify that on October 31, 2024, this document was filed electronically in compliance with Local Rule CV-5(a) and served on all counsel who have consented to electronic service, per Local Rule CV-5(a)(3)(A).

/s/ Robert J. McCallum  
Robert J. McCallum

**CERTIFICATE OF CONFERENCE**

I certify that I conferred by telephone with Zeke DeRose III, counsel for Plaintiffs, on October 31, 2024 at 2:37 p.m. Central Time and again at 6:33 p.m. Central Time regarding this request. In an email sent at 7:38 p.m. Central Time, Mr. DeRose confirmed that Plaintiffs did not oppose Google's request to reschedule the deposition at issue or filing this motion.

/s/ Robert J. McCallum  
Robert J. McCallum